

Overview of Australia's Media Ownership Laws

Commercial Free-to-Air TV Broadcasting Licences

A person must not control (see CONTROL below):

- licences whose combined licence area populations exceed 75% of the population of Australia;
- more than one licence in the same licence area (though see exception below) (s. 53 *Broadcasting Services Act 1992* (BSA)).

Similar limits apply to directors of companies that control licences; a director of two or more companies that between them control licences; a person who controls a licence and who is a director of a company that controls another licence (s. 55 BSA).

A foreign person must not be in a position to control a commercial TV broadcasting licence (s. 57 BSA). Two or more foreign persons must not have company interests in a licensee that exceed 20% (s. 57 BSA). Not more than 20% of the directors of a licensee can be foreign persons (s. 58 BSA).

Exception: Under s. 38A BSA an additional licence may, under certain circumstances, be allocated to the holder of an existing licence in a single licence (solus) market. For the purposes of ownership limits both licences are treated as being only one licence (s.73 BSA).

Pay (Subscription) TV Broadcasting Licences

A foreign person must not have company interests of more than 20% in a licence (s. 109 BSA). Two or more foreign persons must not have company interests of more than 35% in a licence (s. 109 BSA).

Commercial Radio Broadcasting Licences

A person must not control more than two licences in the same licence area (s. 54 BSA).

Similar limits apply to directors of companies that control licences; a director of two or more companies that between them control licences; a person who controls a licence and who is a director of a company that controls another licence (s. 56 BSA).

The BSA imposes no limits on foreign ownership or control.

Newspapers

There are no specific limitations in relation to newspapers contained in the BSA, other than the cross-media rules (refer CROSS-MEDIA CONTROLS next). The *Trade Practices Act 1974* (TPA) also applies (see OTHER MAJOR SOURCES OF LAW below).

Foreign ownership of the print media has generally been regulated by way of a standard Government policy ('Summary of Australia's Foreign Investment Policy', The Treasury, May 2000). This policy relates to the administration of the *Foreign Acquisitions and Takeovers Act*

1975 (FATA), which applies to all media. All direct proposals for foreign investment of more than 5% are subject to case-by-case examination, as are proposals for portfolio shareholdings of more than 5%. Up to 25% foreign investment by a single shareholder in a mass circulation newspaper is permitted, with a maximum of 30% for all foreign interests. Aggregate investment in provincial and suburban newspapers is limited to 50%. A separate policy relates to foreign ownership of ethnic newspapers in Australia.

Cross-Media Controls

A person must not control:

- a commercial TV broadcasting licence and a commercial radio broadcasting licence that have the same licence area; or
- a commercial TV broadcasting licence and a newspaper associated with that licence area (associated newspaper); or
- a commercial radio broadcasting licence and an associated newspaper (s. 60 BSA).

A person must not be a director of:

- a company in control of a commercial TV and a commercial radio broadcasting licence that have the same licence area; or
- a company in control of a commercial TV or radio broadcasting licence and an associated newspaper (s. 60 BSA).

A person must not be in control of:

- a commercial TV broadcasting licence and be a director of a company in control of a commercial radio broadcasting licence with the same licence area or an associated newspaper;
- a commercial radio broadcasting licence and be a director of a company in control of a commercial TV broadcasting licence with the same licence area or an associated newspaper;
- a newspaper associated with the licence area of a commercial TV or radio broadcasting licence and be a director of a company in control of that commercial TV or radio broadcasting licence (s. 61 BSA).

A newspaper is associated with the licence area of a commercial TV broadcasting licence if at least 50% of its circulation is within the licence area (s. 59 BSA). A newspaper is associated with the licence area of a commercial radio broadcasting licence if at least 50% of its circulation is within the licence area and the circulation of the newspaper within the licence area is at least 2% of the licence area population (s. 59 BSA).

Newspapers covered by these provisions must be in the English language, published at least 4 days per week and receive 50% or more of their circulation by way of sale (s.6 BSA).

Control

A person who has company interests in a company which exceed 15% is regarded as being in a position to exercise control of the company (the '15% rule') (cl. 6, Sch. 1, BSA). Company interests include shareholding, voting, dividend or winding-up interests (s. 6 BSA). Importantly, the 15% rule does not only apply to direct interests held in a company, it also applies to an interest of more than 15% which is carried through a chain of companies (cl. 7, Sch. 1, BSA). Minor company interests can also be traced through a chain of companies (fractional tracing method) and combined to determine a person's relevant interest in a company (cl. 8, Sch. 1, BSA).

The 15% rule is not the only determinant of control. The BSA states that "In some cases, it may be important to look at agreements and arrangements between people and at accustomed courses of conduct between people" (cl. 1, Sch. 1) and sets out rules to determine when a person is in a position to exercise control (cll. 2-3, Sch. 1, BSA).

Other Major Sources of Law

Both the TPA and FATA regulate aspects of media ownership. Provisions in the TPA relate to mergers that are likely to have the effect of substantially reducing competition in a market, and the misuse of market power. The provisions of FATA address national interest concerns and require proposed mergers of assets valued at more than \$5 million to be notified in advance to the Treasurer for approval. The provisions of both the TPA and FATA supplement the media-specific provisions of the BSA.

How to Use Media Ownership Update

Major shareholders / significant individuals associated with the controlling interest companies detailed in each table are listed in Table 17.

KEY, NOTES and SOURCES particular to each table appear at the end of each table.

KEY	
%	ownership interest
CA	Canada
GB	Great Britain
IE	Ireland
JV	joint venture
News Corp.	The News Corporation Ltd
PBL	Publishing and Broadcasting Ltd